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Supreme Court of the United States

JESUS C. HERNANDEZ, ET AL.,
Petitioners,

v.

JESUS MESA, JR.,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF *AMICI CURIAE* BORDER SCHOLARS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are some of the country's foremost scholars on issues touching the United States-Mexico border, including transborder populations, binationalism in cultural identity, immigration and migration, asylum and detention, human rights, drug-related violence, political and cultural geography, environment and sustainability, and border economies. *Amici* are interested in providing the Court an accurate portrayal of the United States-Mexico border as it exists in El Paso-Juárez and other communities through which it runs. Identities of *amici* are described in the Appendix.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3(a), counsel for *amici curiae* states that all parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT AND INTRODUCTION

Sergio Adrián Hernández Güereca was shot and killed on the U.S.-Mexico border where it runs through Paso del Norte—a single metropolitan area made up of the twin cities of El Paso and Ciudad Juárez. Though it extends into two countries, Paso del Norte is one community. People here, both Mexicans and Americans, are constantly going from one end of town to the other, many of them doing so every day, even though they cross an international border in the process. They cross because they work jobs on both sides; they cross because their families live on both sides; they cross because they buy goods and services from businesses on both sides.

The killing in the center of this community has presented the Court with important questions of law. *Amici* here speak to two of them. First, what factors determine the extraterritorial reach of the Fourth Amendment's bar against unreasonable seizure of a person's life? In past analysis of the Constitution's extraterritoriality, this Court has taken into account "objective factors and practical considerations," including the nature of the place where an alleged deprivation has occurred, not just the *de jure* sovereignty of that place.[2] Second, can a public officer obtain qualified immunity based on facts that were unknown to the officer at the time of the alleged misconduct? This Court has previously held that the "relevant question" for determining the applicability

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[2] *Boumediene v. Bush*, 553 U.S. 723, 764, 766 (2008).

of qualified immunity is "whether a reasonable officer could have believed [the conduct at issue] to be lawful, in light of clearly established law and the information the . . . officers possessed."[3]

Amici submit this brief about the kind of community where this killing occurred in order to aid the Court's consideration of these questions in three ways. First, as the Court has done in prior extraterritoriality cases, this brief addresses the nature of the place of the alleged deprivation: here, a shared border community where citizens of two countries live, work, and play together. Their interactions and collaborations go on in the midst of the border and the border guards. Second and relatedly, the brief describes basic facts that would be known to a border agent working and firing a weapon within a community like Paso del Norte. Though the agent here did not know Hernández's nationality when he killed him, the agent would have known that American citizens—and many others with strong voluntary ties to this country—are often on the Mexican side of the border in Paso del Norte. *Amici* urge the Court to consider the effect that qualified immunity may have on the behavior of other officers with similar knowledge about the border communities where they work.

Third and most broadly, *amici* intend this brief to help the Court to understand the practical impact of the decision in this case, and especially to recognize the people that it will affect. Many who are not familiar with the border region harbor misconceptions

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[3] *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

about it, including that it is a barren desert and rife with criminal activity. But in fact, if the border agent prevails in this case, the areas in the line of fire include neighborhoods full of schoolchildren and families, and market streets crowded with shopkeepers and tourists.

Paso del Norte is not unique in this regard. All along the border, which nearly 500,000 people cross *every day* in both directions[4], binational communities "function as unified entities despite the division imposed by the international boundary."[5] From San Diego-Tijuana in the West to Brownsville-Matamoros by the Gulf of Mexico, these cross-border twin-city sets are bound together by family ties, economic interdependence, and mutual support. The Court's decision in this case is likely to have powerful effects on them all.

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[4] U.S. DEP'T OF TRANSP., BORDER CROSSING/ENTRY DATA: QUERY DETAILED STATISTICS, https://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BCQ.html (last visited Dec. 6, 2016).

[5] OSCAR J. MARTINEZ, BORDER PEOPLE: LIFE AND SOCIETY IN THE U.S.-MEXICO BORDERLANDS 12 (1994).

Figure 1. Cross-border communities, each comprising two twin cities, are found along the full length of the U.S.-Mexico border. MICHAEL DEAR, WHY WALLS WON'T WORK: REPAIRING THE US-MEXICO DIVIDE **(2015) (map by Dreamline Cartography).**

ARGUMENT

In the transborder communities along the U.S.-Mexico divide, life on one side is not neatly cut off from life on the other. A person who walks along the border in one of these cities walks through the middle of a single bustling community where the fence marking the border is absorbed as just another fixture in city life.

Residents in these twinned cities interact with the border every day in routine and unremarkable ways. They commute across by the thousands each morning and evening. In 2015, some 41 million people crossed on foot, in addition to roughly 138 million as vehicle

Figure 2. The rooftops of El Paso blend almost imperceptibly into those of Ciudad Juárez. Dennis Tangney, Jr., GETTY IMAGES (Oct. 9, 2013).

passengers.[6] They sit through the checkpoint traffic jams of spring break and *Semana Santa*, the Holy Week before Easter. They cross to go to the doctor's or to the shopping mall. The families living here in two countries but one community, the people drawn here by economic opportunities, tourists exploring the area's binational culture—all of them touch the border.[7] Understanding how the border affects people

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[6] U.S. DEP'T OF TRANSP., BORDER CROSSING/ENTRY DATA: QUERY DETAILED STATISTICS, https://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BCQ.html (last visited Dec. 6, 2016).

[7] *See* LAURA VELASCO ORTIZ & OSCAR F. CONTRERAS, MEXICAN VOICES OF THE BORDER REGION ix (2011) ("The internationality and intense cross-border interaction of the border region have, more than any other factors, given it a unique personality and flavor. As a consequence, some argue, the borderlands in their

who live with it, and people who grow up alongside it, is essential to understanding the facts of this case and of the future cases that will be controlled by the decision here.

I. U.S. and Mexican residents of the border region live their lives crossing between two countries and intermingling with people from both sides.

The culture of Paso del Norte has evolved through centuries of influences from both Mexico and the United States.[8] In Juárez today, one can turn off of Avenida Benjamín Franklin, past the thirteen-foot statue of Abraham Lincoln, onto the street that bears his name, continuing north into Texas. A few minutes later, the same person can be driving along El Paso's Porfirio Díaz Street, named for Mexico's former president.[9]

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entirety constitute a single transnational system in which human experiences become defined by ties to the other side.") (quotation marks and citation omitted); LAWRENCE A. HERZOG, FROM AZTEC TO HIGH TECH: ARCHITECTURE AND LANDSCAPE ACROSS THE MEXICO-UNITED STATES BORDER 9 (1999) ("Whereas writers have spoken of border cities as 'twins,' the reality is that the 'twin cities' are gradually blending into single transcultural spaces . . . .").

[8] MARTINEZ, *supra* note 5 at 53 ("Above all, the distinctiveness of border Mexicans and Anglos is embedded in the long-term incorporation of many traits from each other's culture, including cross-borrowing of such things as language, religion, values, customs, traditions, holidays, foods, clothing, and architecture.").

[9] SUSAN J. RIPPBERGER & KATHLEEN A. STAUDT, PLEDGING ALLEGIANCE 3-4 (2003).

Like the streets they travel, the lives of people in Paso del Norte are built on the connections that bind the two sides together, not on the fact of the border.[10] The same is true all along the U.S.-Mexico border where many families straddle both sides.[11]

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[10] In a recent poll, residents from both U.S. and Mexican border cities described "a sense of community and dependency between sister cities across the border." On the Mexican side, 69 percent of residents polled reported that they depend on their neighbor across the border for economic survival. On the U.S. side, the number was 79 percent. Alfredo Corchado, *Common ground: Poll finds U.S.-Mexico border residents overwhelmingly value mobility, oppose wall*, THE DALLAS MORNING NEWS (July 18, 2016), http://interactives.dallasnews.com/2016/border-poll/; Michael Dear, *Whose Borderland? What Evidence? Divergent Interests Concerning the Impact of the US-Mexico Border Wall*, *in* A WORLD OF WALLS (Randall H. McGuire & Laura McAtackney eds., forthcoming 2017) (manuscript at 9) (on file with counsel) ("Today, three-quarters of those polled on both sides recognized their economic codependency with the other side. Overwhelmingly they profess to like their neighbors across the line, and they cross frequently to visit family, shop, work, get a haircut or dental care, and attend school.").

[11] Raquel R. Márquez & Harriett D. Romo, *Introduction*, *in* TRANSFORMATIONS OF *LA FAMILIA* ON THE U.S.-MEXICO BORDER 1-2 (Raquel R. Márquez & Harriett D. Romo eds., 2008) (describing the many families living on both sides of the U.S.-Mexico border who are "economically, socially, and emotionally 'transnational'"); RIPPBERGER & STAUDT, *supra* note 9 at xii ("The necessity of speaking both languages is a requirement that emerges from the daily commerce and trade, frequent work crossings, and cross-border familial and social relations that are omnipresent."); *see also* CARLOS G. VELEZ-IBANEZ, BORDER VISIONS: MEXICAN CULTURES OF THE SOUTHWEST UNITED STATES 3 (1996) ("I was born *con un pie en cada lado*; that is, born with

One example of the transborder existence so common in this region is the family of J.A. Rodriguez, the victim of another cross-border shooting by a U.S. border guard in a case currently before the Ninth Circuit.[12] J.A. and his mother lived in Nogales, Sonora, four blocks from the U.S. border.[13] But while J.A.'s mother was at work, J.A.'s grandmother played a major role in raising him.[14] To care for him, she traveled frequently to Sonora from Arizona where she and J.A.'s grandfather live, now both as U.S. citizens.[15]

The border region is full of similar stories. Gloria Sandoval Caples, a Mexican elementary school teacher, first met her American husband while on a shopping trip in the U.S.[16] Their relationship began to grow with several friendly encounters on the U.S.

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one foot on each side of the political border between Mexico and the United States.").

12 *See Rodriguez v. Swartz*, 111 F. Supp. 3d 1025 (D. Ariz. 2015), *appeal docketed*, No. 15-16410 (9th Cir. July 15, 2015). The plaintiff in *Rodriguez* alleges that, in 2012, a U.S. Border Patrol agent, standing at the edge of Arizona, shot and killed J.A., who was on the Mexican side, walking along one of the main streets of Nogales. *Id.* at 1028-29. The Ninth Circuit panel hearing the appeal in *Rodriguez* has deferred submission pending the Court's decision in this case. *See* Oral Argument at 37:10, *Rodriguez v. Swartz*, No. 15-16410 (9th Cir. Oct. 21, 2016).

13 *Rodriguez*, 111 F. Supp. 3d at 1029.

14 *Id.*

15 *Id.*

16 MARTINEZ, *supra* note 5 at 108-10.

side and one day when he walked Gloria home to Mexico to help her and her mother with some home repairs.[17] The couple eventually married and established their home in El Paso, with Gloria commuting daily across the border to her teaching job in Mexico.[18] Later, Gloria's mother, like J.A.'s grandmother, helped care for their children at her home in Mexico.[19]

Roberto Carrasco's life has little in common with Gloria's, but he too touched the border daily. An American citizen, Roberto attended elementary school in Mexico but high school, college, and graduate school in the United States.[20] He served in the U.S. Navy, which took him abroad, but he spent most of his life on the U.S.-Mexico border.[21] He commuted from his home in Juárez to work as a professor at The University of Texas at El Paso (UTEP), and would travel with his family into the U.S. for movie nights or for longer trips to mountain ranges and beach towns.[22]

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17 *Id.* at 109.

18 *Id.*; email from Oscar J. Martinez, Regents Professor of History, University of Arizona, to Courtney J. Chin (Nov. 15, 2016, 19:29 PST) (on file with counsel).

19 MARTINEZ, *supra* note 5 at 109.

20 *Id.* at 86.

21 *Id.* at 87.

22 *Id.* at 86-87; email from Oscar J. Martinez, *supra* note 18.

Figure 3. A woman, who declined to give her name, is hugged by her husband as they chat through the border fence separating Nogales, Arizona and Nogales, Mexico on July 28, 2010. Jae C. Hong, THE ATLANTIC (May 6, 2013), http://www.theatlantic.com/photo/2013/05/on-the-border/100510/#img36.

Even the people in this region who never cross the border are in constant contact with people from the other side. At UTEP, for example, the student body includes U.S. residents as well as hundreds of students who commute across the border to attend their classes.[23] Eligible Mexican students pay the

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23 Email from Christian Corrales, Student Affairs Official, The University of Texas at El Paso, to Dr. Josiah Heyman (Nov. 3, 2016, 14:48 MST) (on file with counsel); Nestor Rodriguez & Jacqueline Hagan, *Transborder Community Relations at the U.S.-Mexico Border*, *in* CAUGHT IN THE MIDDLE 103 (Demetrios G. Papademetriou & Deborah Waller Meyers eds., 2001) ("Mexican students, many commuting daily from Ciudad Juárez, account

same tuition as in-state students, illustrating the indivisibility of the Paso del Norte community.[24]

The sense of unity in these twin-city pairs is further borne out in joint celebrations of cultural events and in the classrooms of American and Mexican schoolchildren. In Paso del Norte, runners compete in an annual race, the Run International U.S.-Mexico 10K, which begins in El Paso, crosses the Stanton Street Bridge into downtown Juárez, and then turns back to a finish line at the summit of the Paso del Norte Bridge (the bridge beside which Sergio Hernández was killed).[25] Celebrations with music and dancing for the Mexican holiday *el Día de los Muertos*, or Day of the Dead, span several days and both sides of the border.[26] And these communities

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for about 8 percent of the enrollment at [UTEP]."); *see also Border Commuters*, THE UNIVERSITY OF TEXAS AT EL PASO, http://sa.utep.edu/oip/new-students/admissions-information/border-commuters/ (last visited Dec. 6, 2016) (discussing the different types of visa options for border commuter students).

[24] Andrew Rice, *Life on the Line*, N.Y. TIMES, July 28, 2011 (Magazine), at MM20, *available at* http://www.nytimes.com/2011/07/31/magazine/life-on-the-line-between-el-paso-and-juarez.html.

[25] *See* Rudy Gutierrez, *Run International U.S. Mexico 10K run*, EL PASO TIMES, http://www.elpasotimes.com/picture-gallery/news/2016/08/06/run-international-us-mexico-10k-run/88339584/ (last visited Dec. 6, 2016).

[26] *See, e.g.*, *Dia de los Muertos*, SAN DIEGO, https://www.sandiego.org/campaigns/fall-in-san-diego/dia-de-los-muertos.aspx (last visited Dec. 6, 2016); *Things To Do*, VISIT EL PASO, http://www.visitelpaso.com/places/dia-de-los-muertos (last visited Dec. 6, 2016).

mourn together. When Mexican singer Juan Gabriel passed away in August 2016, parallel celebrations of his life occurred on both sides of the border in Paso del Norte, and the cities passed his ashes across so that bishops of both Juárez and El Paso could commemorate his life and work.[27]

In schoolrooms on both the U.S. and Mexican sides of the border region, many thousands of students enroll in bilingual education programs.[28] In El Paso, where some children walk across the border daily to attend class, teachers report higher absenteeism on Mexican national holidays, as well as students who showed up an hour early before Juárez matched its time to daylight savings in the United States.[29] Meanwhile, some parents in El Paso who want their children to be fully bilingual send their children to academically rigorous private schools in Juárez.[30]

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27 *See* María Teresa Vázquez Castillo, *Juan Gabriel and the Taking Back of Downtown Ciudad Juárez*, FRONTERA NORTESUR (Sept. 21, 2016), https://fnsnews.nmsu.edu/juan-gabriel-and-the-taking-back-of-downtown-ciudad-juarez/.

28 *See* Maria Esquinca, *Dual language education system expanding in border schools seeking to close learning gap*, BORDERZINE (Jan. 14, 2015), http://borderzine.com/2015/01/dual-language-education-system-expanding-in-border-schools-seeking-to-close-learning-gap/.

29 RIPPBERGER & STAUDT, *supra* note 9 at 16.

30 *Id.* at 102-03.

II. Cities along the U.S.-Mexico boundary have a long and continuing history of community and cooperation with their cross-border neighbors.

Reflecting the connections among its people, the border region's cities in many ways act in tandem with their counterparts on the other side. In fact, El Paso was once all Mexican territory; it was ceded to the United States in the 1848 Treaty of Guadalupe Hidalgo.[31] But workers and families continued to freely traverse the invisible line between Juárez and El Paso. It was not until 1993 that the United States began meaningfully restricting flows across the border.[32]

The cross-border community of Ambos Nogales—comprising Nogales, Arizona and Nogales, Sonora—shares a similar history. Founded as a single trading post in 1882, Nogales had no physical barrier at the borderline until 1918, and even thereafter, the barrier that was erected functioned like a picket fence

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31 *See* KATHLEEN STAUDT, FREE TRADE? INFORMAL ECONOMIES AT THE U.S.-MEXICO BORDER 33 (1998); DANIEL D. ARREOLA & JAMES R. CURTIS, THE MEXICAN BORDER CITIES: LANDSCAPE ANATOMY AND PLACE PERSONALITY 13 (1993); *see also* RIPPBERGER & STAUDT, *supra* note 9 at 25 ("A town that was once exclusively Mexican, Paso del Norte, was divided into two nations in the mid-1800s. . . . Because of a common history, though, the two cities have a natural affiliation that they maintain in spite of their political division.").

32 STAUDT, *supra* note 31 at 32; ORTIZ & CONTRERAS, *supra* note 7 at 167.

allowing easy movement from one side to the other.[33] For several decades, living in these cross-border communities was not unlike living in Friendship Heights in D.C., where one might not even notice having crossed into Maryland—or living in South Lake Tahoe, California and crossing by chance into Nevada during a morning jog.

A sturdier wall was built through Ambos Nogales in the 1990s, but residents remember that, as recently as 2007, no passport was necessary to cross the border.[34] Even as of this writing, lack of a passport usually results in only a few words of admonition before crossing is allowed.[35]

The major effect of these barriers has been to increase the time that people must spend to cross the

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33 *See* EDWARD S. CASEY & MARY WATKINS, UP AGAINST THE WALL: RE-IMAGINING THE U.S.-MEXICO BORDER 28-29 (2014); Randall H. McGuire, *Steel Walls and Picket Fences: Rematerializing the U.S.-Mexican Border in Ambos Nogales*, 115 AMERICAN ANTHROPOLOGIST 466, 467 (2013); Daniel D. Arreola, *La Cerca y Las Garitas de Ambos Nogales: A Postcard Landscape Exploration*, 43 J. SW. 505, 516 (2001).

34 *See* Julia Preston, *Tighter Passport Rules for U.S. Citizens Start Tuesday*, N.Y. TIMES, Jan. 22, 2007, *available at* http://www.nytimes.com/2007/01/22/us/22passport.html.

35 Wren Abbott, *Unspoken rule allows passport-free border crossings*, NOGALES INTERNATIONAL (Nov. 1, 2010), http://www.nogalesinternational.com/news/unspoken-rule-allows-passport-free-border-crossings/article_c24349d7-6d03-57d1-a140-084ab521c7f7.html; email from Jeremy Slack, Assistant Professor of Geography, The University of Texas at El Paso, to Courtney J. Chin et al. (Nov. 16, 2016, 12:41 PST) (on file with counsel).

border. The region's residents are endlessly sharing strategies for time-efficient crossing. In recent years, U.S. Customs and Border Protection (CBP) has launched programming to speed up the process and has developed a smartphone application, "Border Wait Times," to provide traffic information to drivers and pedestrians.[36]

Meanwhile, frequent crossers or commuters—if they clear an FBI background check and prove their employment—may sign up for CBP's SENTRI program for expedited entry to the United States.[37] Cleared Mexican citizens are also eligible for repeat-visit B1/B2 visas for shopping, family visits, and tourism on the U.S. side up to 75 miles from the border.[38]

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[36] *See* Laura Barron-Lopez, *Here's A Border Program That Actually Works*, THE HUFFINGTON POST (Sept. 17, 2015), http://www.huffingtonpost.com/entry/border-control-el-paso_us_55f33ec6e4b042295e365f84; Vic Kolenc, *App Gives Estimated Wait Times for Border Crossing*, GOVERNMENT TECHNOLOGY (Dec. 23, 2014), http://www.govtech.com/applications/App-Gives-Estimated-Wait-Times-for-Border-Crossing-.html.

[37] *Secure Electronic Network for Travelers Rapid Inspection*, U.S. CUSTOMS & BORDER PROTECTION, https://www.cbp.gov/travel/trusted-traveler-programs/sentri (last visited Dec. 6, 2016).

[38] *Border Crossing Card*, U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, https://travel.state.gov/content/visas/en/visit/border-crossing-card.html (last visited Dec. 6, 2016); *Border Crossing Card*, U.S. CUSTOMS & BORDER PROTECTION, https://help.cbp.gov/app/answers/detail/a_id/1634/~/border-

But stronger barriers and longer wait times have not fundamentally changed the character of the cross-border communities along the U.S.-Mexico divide.[39] The streets that lie to either side of the borderline remain bustling places, and from Tijuana-San Diego to Ambos Nogales to Douglas-Agua Prieta, artists have painted murals over the border fence to make it blend in to their communities.[40]

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crossing-card---documentation-requirements-for-mexican-citizens (last visited Dec. 6, 2016).

39 *See, e.g.*, MARTINEZ, *supra* note 5 at 12 ("Twin-city complexes such as Brownsville-Matamoros, Laredo-Nuevo Laredo, Ciudad Juárez-El Paso, Douglas-Agua Prieta, Nogales-Nogales, Calexico-Mexicali, and San Diego-Tijuana are in the forefront of borderlands interaction. These urban centers function as unified entities despite the division imposed by the international boundary. A prominent borderlands scholar characterizes the urbanized border strip as 'an overlap with a line drawn through the middle of it,' while an experienced urban planner refers to the paired border communities as Siamese twins."); ERIK LEE ET AL., THE STATE OF THE BORDER REPORT: A COMPREHENSIVE ANALYSIS OF THE U.S.-MEXICO BORDER 31 (Erik Lee & Christopher E. Wilson eds., 2013) ("[T]he border is a bicultural space with local interests overlapping in a way that largely ignores the international boundary . . . ."); Dear, *supra* note 10 at 3 ("Cultural and ethnic mixing swiftly became facts of life along the changing frontier . . . . A common refrain, then as now, was that the border had moved, not the people living of the newly-constituted borderland.").

40 *See, e.g.*, Paulina Pineda, *Artist uses paint to 'erase' border fence*, NOGALES INTERNATIONAL (Oct. 14, 2015), http://www.nogalesinternational.com/news/artist-uses-paint-to-erase-border-fence/article_9c6d89b8-72a0-11e5-87f9-57978b03f324.html.

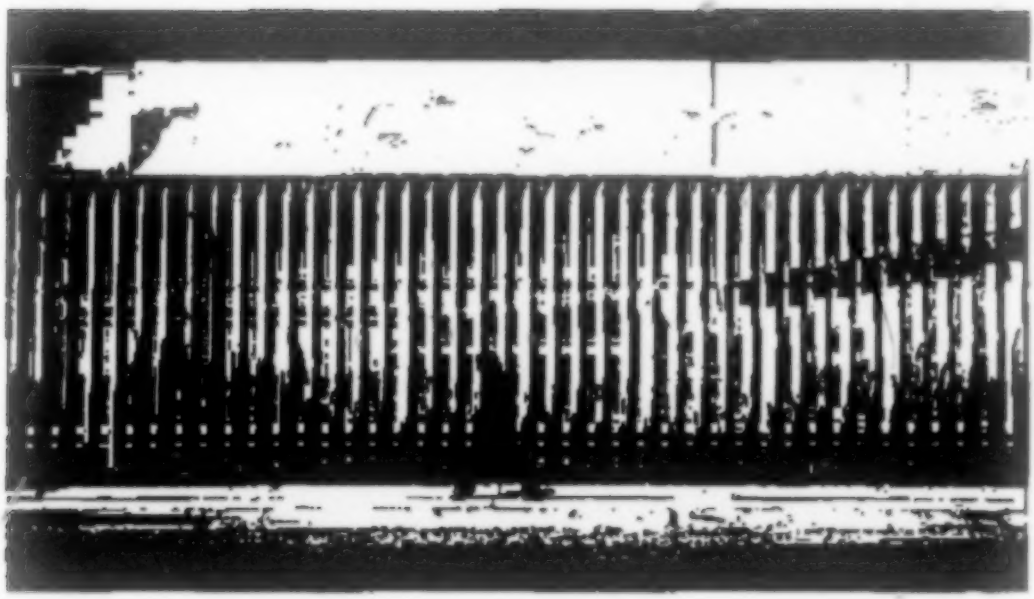

Figure 4. A man walks along the border in Agua Prieta, Mexico, separated from Douglas, Arizona by a painted fence. Courtney Pedroza, DALLAS NEWS (July 18, 2016), http://interactives.dallasnews.com/2016/border-poll/.

Numerous cross-border institutions engage in joint environmental efforts and also cement the political and economic interdependence of the sister cities.[41] When a dam in Juárez threatened to burst and flood downtown El Paso, the two countries' joint International Boundary and Water Commission

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41 Examples include the North American Development Bank, the U.S.-Mexico High-Level Economic Dialogue, the Bilateral Executive Steering Committee, the Border Trade Alliance, and the United States-Mexico Border Health Commission. *See generally* WILSON CENTER, THE U.S.-MEXICO BORDER ECONOMY IN TRANSITION (Erik Lee & Christopher Wilson eds., 2015), *available at* https://www.wilsoncenter.org/sites/default/files/Border_Economy_Transition_Wilson_Lee.pdf; *see also* UNITED STATES-MEXICO BORDER HEALTH COMMISSION, http://www.borderhealth.org/index.php (last visited Dec. 6, 2016).

deployed engineers to build a new canal to relieve pressure and ensure the safety of both cities.[42] Events like the U.S.-Mexico Border Governors Conference and the U.S.-Mexico Border Legislative Conference also facilitate discussion and combined efforts to resolve issues facing both governments, recognizing that the health, environment, and economy of each city here is intimately tied to its cross-border sister.[43] Joint efforts by the two countries to confront shared challenges help to ensure that each pair of cities continues to exist as one community.

Emergency services along the border also have a long history of helping one another. Mexican and U.S. hospitals coordinate with CBP to clear a lane of traffic for cross-border transfers of medical patients

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42 *Juarez dam no longer a threat to El Paso*, ASSOCIATED PRESS (Aug. 7, 2007), http://www.chron.com/news/houston-texas/article/Juarez-dam-no-longer-a-threat-to-El-Paso-1530054.php.

43 WILSON CENTER, *supra* note 41 at 25; *see also* Diane Austin, *Confronting Environmental Challenges on the US-Mexico Border: Long-Term Community-Based Research and Community Service Learning in a Binational Partnership*, 18 J. CMTY. PRACTICE 361 (2010); Federico G. de Cosio et al., *United States-Mexico Border Diabetes Prevalence Survey: lessons learned from implementation of the project*, 28 REV PANAM SALUD PUBLICA 151 (2010); Michael A. Flynn et al., *Improving Occupational Safety and Health Among Mexican Immigrant Workers: A Binational Collaboration*, 128 PUBLIC HEALTH REPORTS 33 (2013); BINATIONAL BORDER INFECTIOUS DISEASE SURVEILLANCE PROGRAM (BIDS) (June 2015), http://www.cdc.gov/usmexicohealth/pdf/bids-fact-sheet.pdf.

(including non-U.S. citizens) to U.S. hospitals.[44] In Nogales, the cities pass water from one side to another during drought,[45] and send fire trucks to safeguard cross-border neighbors during emergencies.[46]

III. Cross-border trade, commerce, and tourism fuel the border region's economy in both Mexico and the United States.

The economic vitality of borderland communities also depends to a great degree on the international flow of both people and goods. Different prices prevailing on opposite sides generate significant trade, and as noted above, the resulting cross-border traffic is immense. Studies estimate that the U.S. economy loses $116 million for every *minute* of delay

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[44] Joseph J. Kolb, *Delivering Critical Care in Ciudad Juárez and on the U.S.-Mexico Border*, J. EMERGENCY MED. SERVS. (Apr. 1, 2014), http://www.jems.com/articles/print/volume-39/issue-4/features/delivering-critical-care-in-ciudad-ju-rez-and-on-the-u-s-mexico-border.html; Ieva Jusionyte, *Interview with CBP: Patient Transfer at the Port of Entry*, BORDER RESCUE PROJECT (Sept. 8, 2015), http://www.borderrescueproject.com/journal/2015/9/8/d6deqxondncx8yjohr6aivtzgs9ami.

[45] TERRY W. SPROUSE, WATER ISSUES ON THE ARIZONA-MEXICO BORDER: THE SANTA CRUZ, SAN PEDRO AND COLORADO RIVERS 4 (2005).

[46] *See* Manuel C. Coppola, *Blaze in Nogales, Sonora battled from both sides of the border*, NOGALES INTERNATIONAL (May 10, 2012), http://www.nogalesinternational.com/news/blaze-in-nogales-sonora-battled-from-both-sides-of-the/article_3267761e-9b0d-11e1-85e7-001a4bcf887a.html.

Figure 5. Firefighters in Nogales, Arizona reach over the border fence to put out a fire in Nogales, Sonora. Manuel C. Coppola, NOGALES INTERNATIONAL (May 10, 2012), http://www.nogalesinternational.com/news/blaze-in-nogales-sonora-battled-from-both-sides-of-the/article_3267761e-9b0d-11e1-85e7-001a4bcf887a.html.

in inspection lanes at the five busiest points of entry on the border with Mexico.[47]

A significant portion of this traffic represents individual residents from each country who cross to the other in order to purchase goods and services. In Paso del Norte, approximately 55 percent of households shop across the border for comparative price advantages.[48] El Pasoans cross for health and dental care, which is frequently less expensive in Mexico, while Mexican shoppers regularly cross the border seeking electronics, clothing, and household

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47 Barron-Lopez, *supra* note 36.

48 STAUDT, *supra* note 31 at 71.

items.[49] These visiting Mexican shoppers have recently spent more than $445 million per year with El Paso retailers.[50] In Nogales, Arizona, Mexican visitors yield some 60 to 80 percent of sales tax collections.[51] And during the holiday season alone, cross-border shopping creates over 5,000 jobs in the cities along the U.S. side of the border.[52]

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[49] *Id.* at 71-72; Jessica Chapin, *Reflections from the Bridge*, *in* ETHNOGRAPHY AT THE BORDER 10 (Pablo Vila ed., 2003); Kathleen Staudt et al., *In the shadow of a steel recycling plant in these neoliberal times: health disparities among Hispanics in a border* colonia, 21 LOCAL ENVIRONMENT 636, 645 (2016) (recounting the story of a man who could not receive treatment for his impending heart attack in the U.S., but sought medical care in Juárez and has survived in good health).

[50] *See* STEVE NIVIN, SPENDING PATTERNS AND ECONOMIC IMPACTS OF MEXICAN NATIONALS ON EL PASO: A COMPARISON TO CENTRAL AND SOUTH TEXAS, 2010-2012, 5 (2015); U.S. DEP'T OF COMMERCE, EL PASO, TX: MERCHANDISE EXPORTS IN 2015 (2016); *see also* Robert Gray, *$446M: What Mexicans spend in El Paso*, EL PASO INC. (Apr. 27, 2015), http://www.elpasoinc.com/news/local_news/article_bbb787cc-ecec-11e4-b6b5-3fbb35ffa014.html (noting that Mexican shoppers spent even more in Hidalgo County, home to McAllen, Texas).

[51] Jonathan Clark, *CBP stats show big drop in local border-crossings*, NOGALES INTERNATIONAL (Dec. 20, 2011), http://www.nogalesinternational.com/news/cbp-stats-show-big-drop-in-local-border-crossings/article_28530fac-2aac-11e1-8f2e-0019bb2963f4.html.

[52] *See* Pauline Sullivan et al., *Mexican national cross-border shopping: Exploration of retail tourism*, 19 J. RETAILING & CONSUMER SERVS. 596, 601 (2012).

Tourism too constitutes an important industry in the border economy. Tijuana, Nogales, Juárez, and Mexicali are all popular destinations for U.S. travelers. In cities like these, most restaurants and businesses catering to tourists are within a few blocks of the border.[53] Accordingly, travel guides recommend that American visitors park their cars on the U.S. side and walk into Mexico.[54] Given the volume of people who cross between Mexico and the United States to vacation—in addition to those who cross to shop, eat, and work—it would be unwise to assume the nationality of any person seen just beside the border, on either side.

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CONCLUSION

In considering this case, *amici* urge the Court to recognize that the metropolitan areas along the border region—though they extend into two countries—are unified communities of families, workers, and businesses. When a person who lives

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53 *See* ARREOLA & CURTIS, *supra* note 31 at 86, 93; EDWARD R. BURIAN, THE ARCHITECTURE AND CITIES OF NORTHERN MEXICO FROM INDEPENDENCE TO THE PRESENT 181 (2015) ("The primary commercial strip through [Nogales, Sonora] is Avenida Obregón, with many tourist-oriented shops, restaurants, bars, and pharmacies only a few blocks from the border.").

54 *See, e.g.*, JOHN NOBEL ET AL., LONELY PLANET, MEXICO 745 (14th ed. 2014); DK EYEWITNESS TRAVEL, ARIZONA & THE GRAND CANYON 103 (6th ed. 2015); JOHN FISHER ET AL., ROUGH GUIDES, THE ROUGH GUIDE TO MEXICO 519 (9th ed. 2013).

here walks beside the border, he walks beside a fence that is a mundane and unremarkable fixture in his world. He walks past shopkeepers trying their hardest to attract tourists; he walks where his neighbors buy their clothes and eat their meals. Whether Mexican or American, he walks through the middle of his community.

Respectfully submitted.

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December 9, 2016

APPENDIX

APPENDIX: LIST OF *AMICI CURIAE*

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Daniel D. Arreola is a Professor Emeritus in the School of Geographical Sciences and Urban Planning at Arizona State University. He has published extensively in scholarly journals and in book chapters and has authored several books on topics relating to the cultural geography of the Mexican-American borderlands.

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Howard Campbell is Professor of Anthropology and Chairman of the Department of Sociology & Anthropology at The University of Texas at El Paso. He is the author or editor of six books concerned with Mexico or the U.S.-Mexico border, and he has written numerous articles and one book concerned with issues that affect the lives of border residents.

Selfa Chew holds a Bachelor's Degree in Communication Science from Universidad Nacional Autónoma de México, a Master of Fine Arts degree in Creative Writing, and a Ph.D. in Borderlands History from The University of Texas at El Paso. Her latest publication is *Uprooting Community: Japanese Mexicans, World War II and the U.S.-Mexico Borderlands* (University of Arizona Press, 2015).

Mat Coleman is Associate Professor in the Department of Geography at The Ohio State University and is a political geographer who works in the areas of policing and race, law and geography, migration, and border economies. Dr. Coleman is editor of the Geographies of Justice and Social Transformation series at the University of Georgia Press.

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Michael Dear is Emeritus Professor in the College of Environmental Design at the University of California, Berkeley, and Honorary Professor in the Bartlett School of Planning at University College, London (England). His latest book, *Why Walls Won't Work: Repairing the US-Mexico Divide* (Oxford University Press, 2013) was awarded the Globe Prize for Geography in the Public Interest from the Association of American Geographers.

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Carina Heckert is Assistant Professor of Anthropology at The University of Texas at El Paso. Her research focuses on how public policies shape people's experiences with illness and experiences seeking healthcare, as well as HIV/AIDS, gender-based violence, and immigrant mental health in both Latin America and the United States. She currently lives, teaches, and conducts research in the border community of El Paso-Juaréz.

Lawrence Herzog, Professor in the School of Public Affairs at San Diego State University, has focused his life's work on the subject of the "transfrontier metropolis" along the U.S.-Mexico border. He has written and edited ten books on the subject, including *Where North Meets South: Cities, Space and Politics on the U.S.-Mexico Border* (University of Texas Press, 1990) and *From Aztec to High Tech: Architecture and Landscape Across the*

U.S.-Mexico Border (Johns Hopkins University Press, 1998).

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Oscar J. Martinez is Regents Professor of History at the University of Arizona, where he teaches courses on the History of Mexico, History of Mexican Americans, History of the U.S.-Mexico Border Region, and the Nature and Practice of History. His books

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